



[Billing code: 6750-01-S]

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (“FTC”).

ACTION: Notice and request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, the FTC is seeking public comments on its request to OMB for a three-year extension of the current PRA clearance for information collection requirements contained in Use of Prenotification Negative Option Plans (“Negative Option Rule” or “Rule”). That clearance expires on November 30, 2017.

DATES: Comments must be received by [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the SUPPLEMENTARY

INFORMATION section below. Write “Negative Option Rule: FTC File No. P064202” on your comment, and file your comment online at

<https://ftcpublic.commentworks.com/ftc/NegOptionPRA2> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the

Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to John Andrew Singer, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., CC-9528, Washington, DC 20580, (202) 326-3234.

SUPPLEMENTARY INFORMATION:

Title: Use of Prenotification Negative Option Plans (Negative Option Rule or Rule), 16 CFR 425.

OMB Control Number: 3084-0104.

Type of Review: Extension of a currently approved collection.

Abstract: The Negative Option Rule governs the operation of prenotification subscription plans. Under these types of plans, a seller provides a consumer with automatic shipments of merchandise such as when a consumer joins as a member in a seller's book of the month club, food of the month club, or clothing items of the month club unless the consumer affirmatively notifies the seller they do not want the shipment. The Rule requires that a seller notify a member that they will automatically ship merchandise to the member and bill the member for the merchandise if the subscriber fails to expressly reject the merchandise beforehand within a prescribed time. The Rule protects consumers by: (a) requiring that promotional materials disclose the terms of

membership clearly and conspicuously; and (b) establishing procedures for the administration of such “negative option” plans.

On August 16, 2017, the Commission sought comment on the Rule’s information collection requirements. 82 FR 38907. No germane comments were received.¹ As required by OMB regulations, 5 CFR 1320, the FTC is providing this second opportunity for public comment.

Likely Respondents: Sellers of prenotification subscription plans.

Estimated Annual Hours Burden: 9,725 hours.

Estimated Annual Cost Burden: \$473,750 (solely related to labor costs).

Estimated Capital or Other Non-Labor Cost: \$0 or *de minimis*.

Request for Comment

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Write “Negative Option Rule: FTC File No. P064202” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

¹ The Commission received twelve non-germane comments.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/NegOptionPRA2> by following the instructions on the web-based form. When this Notice appears at <http://www.regulations.gov>, you also may file a comment through that Web site.

If you file your comment on paper, write “Negative Option Rule: FTC File No. P064202” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610, Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503.

Comments sent to OMB by U.S. postal mail are subject to delays due to heightened

security precautions. Thus, comments can also be sent via email to wlberante@omb.eop.gov.

Because your comment will be placed on the publicly accessible FTC Web site at <https://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" —as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General

Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC Web site, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Christian S. White
Acting General Counsel.
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